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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/390,625 09/07/99 WALKER B PM-223529

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EXAMINER

BROWN, M

ART UNIT

PAPER NUMBER

3764

DATE MAILED:

08/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/370,625

Applicant(s)

Brook Walker

Examiner

Michael Brown

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-33 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-14, 14-17, 19-29 and 32-33 is/are rejected.
- ☒ Claim(s) 5-13, 18, 30-31 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear if the recess is on the rear surface. In claim 1, it is not clear if there is a plurality of ramps and a plurality of recesses or a plurality of ramps and one recess. In claim 14, it is not clear as to what the tether is in reference to.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 14-17, 19-24, 27-29 and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Colonello.

Colonello discloses in figures 1-10 a portable sacral support comprising a main body 10 having a rear surface having a plurality of ramp 25, recess 16, molded plastic (col. 4, line 28), thicken end portions (the end portions are thicken), flexible gates (the portions between the center

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portion and the outer side areas), dimples (the cutout areas of 25), through holes (the holes formed between 24), a raised area (the upper portion of the body is raised at 14) and a lower protruding portion 14.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colonello.

Colonello discloses in figures 1-10 a portable sacral support, substantially as claimed. However, Colonello does not disclose what type of plastic the support is made of. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the support as disclosed by Colonello could be fabricated of polyurethane because it is a plastic material that is durable and inexpensive to manufacture.

***Allowable Subject Matter***

6. Claims 5-13, 18 and 30-31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Axelson discloses a back support. Maier discloses a back cushion. Speece discloses an immobilization device. Although each of these references discloses structural limitations recited in the claims, neither was used to reject any claims, in the first office action.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown  
July 26, 2000



**Michael A. Brown**  
**Primary Examiner**